



SMART ODR PORTAL NOT THE ONLY GAME IN TOWN: WILL IT MAKE THE CUT?

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I. Introduction

In today's ever evolving global securities market, the resolution of securities disputes is becoming increasingly expensive and time consuming. The Securities and Exchange Board of India ("SEBI") in its recent attempt to foster growth and innovation in the ecosystem and strengthen the existing grievance redressal system, has mainstreamed Online Dispute Resolution ("ODR") for resolution of disputes arising in the Indian Securities Market between investor/clients and listed companies or registered intermediaries.

ODR is a process to settle disputes outside courts, combining technology and alternative dispute resolution ("ADR") mechanisms of conciliation, mediation and arbitration. ODR or e-ADR offers a faster, transparent, cost effective, accessible and efficient option to resolve disputes online. ODR of disputes arising out of securities market has already been integrated in several jurisdictions such as Australia and Italy, however, it has not gained much momentum in India.

While the existing Market Infrastructure Institutions ("MII") did provide for conciliation and arbitral process (including appellate arbitration) for resolution of disputes, the same was largely physical with some parts incorporated to digital mode due to the onset of COVID-19. It was riddled with complexities and non-uniformity and was restricted only against selected regulated entities- stock-brokers, depository participants, listed companies and registrars and transfer agents. Moreover, the existing process provided for a multi layered approach, requiring the claimant to comply with certain pre-arbitral actions such as (i) filing of complaint with the concerned market participant and (ii) through SEBI Complaints Redress System ("SCORES") Portal and (ii) time bound conciliation process through the Investor Grievance Redressal Committee ("IGRC") of the concerned stock exchange.

With a view to revamp the existing mechanism, in July 3, 2023, a specific amendment to the dispute resolution clause was introduced in each of the respective SEBI Regulations governing the market intermediaries¹ and regulated entities. The amendment mandated submission of "all claims, differences or disputes" "to a dispute resolution mechanism that **includes** mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by the (SEBI)".²

Subsequent thereto, SEBI notified Master Circular dated August 4, 2023 on "Online Resolution of Disputes in the Indian Securities Market" ("**ODR Circular**"), which provided for online conciliation and online arbitration for resolution of disputes arising in the Indian Securities Market between (i) investors/ clients and listed companies (including their registrar and share transfer agents); (ii) institutional or corporate clients and specified intermediaries/regulated entities.

Pursuant to the said ODR Circular, SMART ODR Portal - 'Securities Market Approach for Resolution Through ODR', was set up on August 16, 2023 ("**ODR Portal**") by MII³ which empanelled the ODR Institutions.⁴ This ODR Portal is connected to **SCORES** Portal. Hereunder, SEBI has, delegated the responsibility of grievance redressal in relation to all securities market intermediaries to MII and ODR Institutions. However, under the SCORES Portal, SEBI maintains oversight and disposes off the investor complaints filed, whilst, the listed entity/ SEBI registered intermediary, continue to be directly responsible for redressal of investor complaints.⁵

The ODR Portal offers a platform to (i) investors to file any complaints in case the investor is not satisfied with the resolution of the complaints raised directly with the concerned market participant (listed companies / specific intermediaries / regulated entities in the securities market)

(a) either prior to escalation through SCORES Portal or (b) post escalation through SCORES Portal; (ii) market participant to initiate dispute resolution through the ODR Portal after providing the investor at least 15 calendar days' notice for resolution of pending dispute.⁶ Furthermore, dispute resolution through the ODR Portal can be raised only when it is within the applicable law of limitation and when it is not under consideration under SCORES guidelines or not pending before any court, consumer forum, arbitral process or is not arbitrable according to Indian law.⁷

The Securities and Exchange Board of India ('SEBI') in its recent attempt to foster growth and innovation in the ecosystem and strengthen the existing grievance redressal system, has mainstreamed Online Dispute Resolution ("ODR") for resolution of disputes arising in the Indian Securities Market between investor/clients and listed companies or registered intermediaries.

Recently, SEBI vide its Circular dated September 20, 2023 on "Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform" ("**SCORES Circular**") has revamped the existing SCORES platform, by reducing timelines and by introducing auto-routing and auto-escalation of complaint in the event of non-adherence to the prescribed timelines by the regulated entity. The provisions of the SCORES Circular will however, take effect from December 4, 2023, until then the existing regime under the November 2022 SEBI Circular shall apply.⁸ It is pertinent to note that the said SCORES Circular clarifies that "investors can approach ODR mechanism or other appropriate civil remedies at any point of time. In case the complainant opts for ODR mechanism or other appropriate civil remedies while the complaint is pending on SCORES, the complaint shall be treated as disposed on SCORES"⁹. Thus, ODR mechanism is not the only game in town and is an option available in addition to other legal forums including civil courts, consumer courts, etc.

II. SALIENT FEATURES OF THE ODR FRAMEWORK

(i) Mandatory and Optional Framework

The ODR Circular envisages two separate frameworks (mandatory and optional) for different categories of specified intermediaries/ regulated entities. The disputes between

- (a) Regulated entities / intermediaries forming a part of **Schedule A**¹⁰ to the ODR Circular and their investors/ clients arising out of the securities market, are to be resolved in accordance with the mechanism and timelines provided in the Circular.
- (b) Regulated entities / intermediaries forming a part of **Schedule B**¹¹ to the ODR Circular (and their institutional or corporate clients arising out of the securities market, can be resolved at the option of the institutional or corporate clients either :
 - (i) within the mechanism and timelines provided in the ODR Circular, as detailed above; or
 - (ii) by independent institutional mediation, conciliation and / or online arbitration institution in India. The Institutional or corporate clients of Schedule B intermediaries/ regulated entities are required to exercise the above option:
 - For existing and continuing contracting arrangements - within a period of 6 months from the date of the ODR Circular, failing which the mechanism and timelines under the ODR Circular shall apply; and
 - for new contractual arrangements - at the time of entering into the arrangements.¹²

Thus, where institutional or corporate clients of Schedule B entities opt for traditional arbitration under the Arbitration and Conciliation Act, 1996 ("**Arbitration Act, 1996**") the parties upon agreeing to arbitrate, are bound not to initiate court proceedings in breach of the arbitration agreement.

(ii) Online Conciliation and Arbitration under the ODR Circular

Conciliation

- a) Upon registration of the complaint on the ODR Portal, it proceeds to online conciliation by a sole independent and neutral conciliator appointed from the panel of conciliators by the ODR institutions.¹³ Schedule D to the ODR Circular lays down qualitative norms for empanelment of the concerned conciliator or arbitrator by the ODR Institutions.¹⁴
- b) The conciliator's appointment is to be done within 5 days of the receipt of reference of dispute by the ODR institution.¹⁵

c) The ODR Portal prescribes a strict timeframe for resolution of disputes i.e. 21 days (subject to further extension of 10 days) through online conciliation by a sole conciliator.¹⁶ If conciliation is successful, then a settlement agreement is to be executed and stamped through an online mode and the MIIs are tasked with monitoring the due payment or adherence to the settlement agreement.¹⁷

If the grievance is not successfully resolved through online conciliation, the conciliator will ascertain the value of the admissible claim and notify the disputing parties, ODR institutions and the MII of the same and thereafter online arbitration is initiated as per the ODR Circular.

Arbitration

d) If the grievance is not successfully resolved through online conciliation, the conciliator will ascertain the value of the admissible claim and notify the disputing parties, ODR institutions and the MII of the same and thereafter online arbitration is initiated as per the ODR Circular.¹⁸ Prior to initiation of online arbitration the Market Participant must deposit 100% of the admissible claim value with the relevant MII and make payment of fees.¹⁹

e) A sole independent, and neutral arbitrator is appointed from its panel of arbitrators within 5 calendar days of reference by the institution.²⁰

f) The arbitral hearing will be conducted subject to value of claim and/or counter claim. For instance, if the value of claim and/or counter claim is in excess of Rs. 1,00,000/- , then the Sole Arbitrator or Arbitral Tribunal shall conduct one or more hearings and pass the arbitral award within 30 days. Similar timeframe is in place for claims and/or counter claims of Rs. 1,00,000/- or below but the Sole Arbitrator shall conduct a document-only arbitration process and pass the arbitral award within 30 calendar days.²¹ However, the arbitrator can grant hearing to the parties for recorded reasons.

g) In furtherance of the conclusion of arbitration proceedings, and issuance of arbitral awards, if the terms of such award required payment of any amount, then the same shall be done within 15 calendar days from the date of arbitral award.²²

h) Moreover, if the Market Participant wishes to challenge such an arbitral award, then the intention to challenge the same under Section 34, Arbitration Act 1996 should be done within 7 calendar days in the ODR Portal for onward notification to the parties in whose favour the arbitral award has been passed and the relevant MII. If stay is not granted within 3 months from the date of the receipt of the award, then complete adherence to the terms of award becomes mandatory.²³

i) Another distinct feature of arbitration under the ODR Portal is process of implementation of the award, which is unique. The Market Participant wishing to challenge the arbitral award is required to deposit 100% of the amounts payable in terms of the arbitral award with the relevant MII prior to initiation of the challenge, (including prior to initiation of online arbitration) failing which it could be (i) liable to be declared as not 'Fit and Proper' in terms of the SEBI (Intermediaries) Regulations, 2008 (ii) liable to have its registration cancelled, or (iii) or liable to its business activities suspended.²⁴ A listed company that fails to deposit the amount may also face consequences as determined necessary or appropriate by the Stock Exchange. Fixing the deposit amount at 100%, ensures that the Market Participant is deterred from prolonging a dispute, and ODR is established as an effective remedy in comparison to other civil remedies.

j) MII's are obligated to make payouts not exceeding Rs 5,00,000/- from such deposited amount, upon application being made by the investor/client in this behalf. MII is also obligated to obtain appropriate undertaking/ indemnity / security from the investor/client to ensure return of the amount so released, in case the challenge is decided against the investor/client.²⁵

III. CONCLUSION

The ODR Portal is a progressive step in tandem with the dual objectives of the ODR Circular of providing seamless, cost effective, accessible and time bound resolution of investor / client grievances pertaining to all specified market intermediaries.

It is pertinent to note that the previous MIIs administered dispute resolution process provided for a second bite at the cherry by way of appellate arbitral mechanism, whereby an award given in the first instance could be challenged before a new appellate arbitration panel on a substantive level. The same has been done away with. The overall process is still multilayered, despite, the ODR Circular providing the investors the option to approach ODR directly (without going through SCORES), if they are not satisfied with the market participant's resolution. It is pertinent to note that the investors can still approach SCORES if they are not

satisfied with Market Participant and then finally, resort to ODR. Hence, the timeline of the process is prolonged in essence. It increases the costs incurred by the investors, contravening the main objectives of the SEBI for the introduction of this portal, and raising the ultimate question- will the SMART ODR Portal succeed?

The tumultuous waters of the securities market have been hard to navigate. This is attributable to the financial scams

that shake up the core of the Indian economy and failure to regulate market intermediaries. Accordingly, SEBI undertakes various measures from time to time to not only secure the financial stronghold of the nation, but also instill confidence in the investors. The success of this new initiative - SMART ODR Portal will be ultimately determined by the market participants' readiness to adapt to the online dispute resolution framework and the Portal's ability to keep disputes cybersecure.

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Namita has over a decade of experience in corporate and commercial litigation and arbitration. She is a Fellow of the Chartered Institute of Arbitrators (CI Arb). Her field of practice covers a wide range of disputes including those relating to joint ventures, shareholder agreements, private equity transactions, media rights contracts, general commercial contracts, construction projects, and securities and other regulatory litigation. Namita's experience encompasses some precedent setting litigations in India, relating to securities / commodities trading and transactions which have been among the first of their kind. She has also represented parties before the Supreme Court, various High Courts across India and various other tribunals such as Securities Appellate Tribunal, Appellate Tribunal for Foreign Exchange, Debt Recovery Tribunal, National Company Law Tribunal, National Green Tribunal and regulators such as SEBI and Enforcement Directorate.

1. Reg. 28B, Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992;
Reg. 15B, Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993;
Reg. 14A, Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993,
Reg. 59B, Securities and Exchange Board of India (Mutual Funds) Regulations, 1996;
Reg. 17A, Securities and Exchange Board of India (Custodian) Regulations, 1996;
Reg. 14A, Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999;
Reg. 14A, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999;
Reg. 16B, Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011;
Reg. 25, Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012;
Reg. 21(4), Securities and Exchange Board of India (Investment Advisers) Regulations, 2013,
Reg. 26A, Securities and Exchange Board of India (Research Analysts) Regulations, 2014;
Reg. 22A, Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014; Reg. 22A, Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014; Reg. 67(5), Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015;
Reg. 24A, Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019;
Reg. 22A, Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020;
Reg. 16A, Securities and Exchange Board of India (Vault Managers) Regulations, 2021.
2. Securities and Exchange Board of India (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023, SEBI/LAD-NRO/GN/2023/137 (2023).
3. The MIs involved in setting up of SMART ODR Portal are namely, Bombay Stock Exchange (BSE), Central Depository Services (India) Limited (CDSL), Metropolitan Stock Exchange of India Limited (MSE), Multi Commodity Exchange of India Limited (MCX), National Commodity and Derivatives Exchange (NCDEX), National Securities Depository Limited (NSDL), and National Stock Exchange of India Limited (NSE).
4. The ODR Institutions empaneled by the MIs are namely, Centre for Alternative Dispute Resolution Excellence (CADRE ODR), Centre for Online Dispute Resolution (CORD), Jupitice, Just Act, Presolv 360, SAMA, Webnyay.
5. SEBI Circular SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145, 'Master Circular for Online Resolution of Disputes in the Indian Securities Market' ¶12 (2023) [hereinafter referred as "ODR Circular"].
6. ODR Circular ¶12.
7. ODR Circular ¶13.
8. Master Circular dated November 07, 2022 on "Processing of investor complaints against listed companies in SEBI Complaints Redress System - SCORES" (bearing reference SEBI/HO/OIAE/IGRD/P/CIR/2022/0150).
9. SEBI/HO/OIAE/IGRD/CIR/P/2023/156, 'Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform' Annexure II, ¶19 (2023).
10. Alternative Investment Funds-Fund Managers, Collective Investment Management Company, Commodity Clearing Corporations, Depository Participants, Investment Advisors, Infrastructure Investment Trust- Investment Manager, Mutual Funds-AMCs, Portfolio Managers, Registrar and Share Transfer Agents, Real Estate Investment Trusts- Managers, Research Analyst, Stock Brokers.
11. Clearing Corporations, Credit Rating Agency, Debenture Trustees, Merchant Bankers, Proxy Advisors, Vault Managers.
12. ODR Circular ¶3.
13. ODR Circular ¶17.
14. ODR Circular ¶17.
15. ODR Circular ¶18.
16. ODR Circular ¶18.
17. ODR Circular ¶19.
18. ODR Circular ¶20.
19. ODR Circular ¶20.
20. ODR Circular ¶21.
21. ODR Circular ¶22.
22. ODR Circular ¶23.
23. ODR Circular ¶24.
24. ODR Circular ¶25.
25. ODR Circular ¶25.

FORUM VIEWS



 BOMBAY STOCK EXCHANGE BROKERS' FORUM (BBF) hosts
MUMBAI
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